




U.S. Customs and Border Protection

Commissioner

August 18, 2021

MEMORANDUM FOR: See Distribution

FROM: Troy A. Miller 
Acting Commissioner

SUBJECT: Pregnancy and Childbirth Guidance

U.S. Customs and Border Protection (CBP) CBP is currently assisting in the implementation of the Centers for Disease Control and Prevention's *Public Health Reassessment and Order Suspending the Right to Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists* (August 2, 2021) ("Order"). Pursuant to this Order, covered noncitizens – to include family units and single adults who seek to unlawfully enter the United States between ports of entry (POEs) – are subject to expulsion pursuant to 42 U.S.C. §§ 265, 268 ("Title 42"). The Order also includes an exception for those "whom customs officers determine, with approval from a supervisor, should be excepted from this Order based on the totality of the circumstances, including consideration of . . . humanitarian and public health interests."

CBP leadership has concluded that the treatment of women who give birth in CBP custody raises significant humanitarian and public health interests, and that these interests warrant serious consideration as part of a customs officer's assessment of whether an exception to the Order, based on the totality of the circumstances, is warranted. Women who have given birth in CBP custody may require additional medical care such that expulsion of the mother may lead to negative health outcomes for the mother and/or her newborn child. Additionally, these women could be expelled at locations or into conditions that make it difficult to safely care for the newborn child and recover from the delivery. When conducting a totality of the circumstances assessment to assess whether an exception is warranted, agents/officers should consider that the public health and humanitarian interests may weigh in favor of an exception from the Order for mothers who have given birth while in CBP custody and require medical attention. In instances where an agent/officer, assessing the totality of the circumstances, concludes that a mother who has given birth while in CBP custody and requires medical attention should be expelled under the Order, the agent/officer must first seek approval from a second line supervisor.

CBP is also taking action to make sure pregnant women in its custody have access to a medical assessment. Henceforth, any female in custody at a CBP facility who answers "yes" to question 5 in the Alien Health Background section of the CBP Form 2500 (indicating that she is pregnant) will be offered a medical assessment if there is a medical provider present at the facility. It is not expected that every pregnant noncitizen in CBP custody will want a medical assessment. Such medical assessment, if provided, will be documented in the systems of record. If the offer is declined, the female will not be provided a medical assessment. The declination will be documented in the systems of record. This new guidance augments CBP's existing guidance, which provides for medical care of those in CBP custody with urgent medical issues.

CBP is committed to treating those in its custody with dignity and respect. This guidance reiterates that commitment.

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